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January 9, 2006

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Federal Communications Commission
Office of Secretary

HAND DELIVERY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: Redacted Copies of Comments containing Confidential Information in WC Docket No. 05-281

Dear Ms. Dortch:

Attached are two copies in redacted form of comments and attachments that we are filing today in behalf of General Communication, Inc. We are also filing, under separate cover, one copy of the same in unredacted form.

Please let me know if I can be of further assistance. I can be reached at 202 730 1300.

Sincerely,

John T. Nakahata
Counsel to General Communication, Inc.

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JAN - 9 2006

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 251(d)(1) in the Anchorage LEC Study Area	WC Docket No. 05-281

OPPOSITION OF GENERAL COMMUNICATION, INC. TO THE PETITION FOR FORBEARANCE FROM SECTIONS 251(c)(3) AND 252(d)(1) OF THE COMMUNICATIONS ACT FILED BY ACS OF ANCHORAGE

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SUMMARY

General Communication, Inc. ("GCI") is a competitive LEC that has brought the enormous benefits of retail competition to Anchorage consumers, just as Congress intended when it created the 1996 Act. By purchasing and installing its own switch and transport facilities, and by providing superior customer service and new consumer choices, GCI has been able to capture a significant percentage of existing retail customers, which has in turn allowed state regulators to substantially deregulate retail prices. But all of this success has rested – and continues substantially to rest – on GCI's ability to reach its customers over UNE loops owned by ACS of Anchorage, Inc. ("ACS"), the incumbent LEC. For instance, GCI at the present time serves nearly 70% of its existing switched voice lines using ACS facilities, predominantly UNE loops. Today, GCI is working as quickly as possible to deploy its own last-mile facilities where it is economically feasible to do so and is as eager as anyone to reduce its reliance on ACS's loops. Nevertheless, that process is far from complete.

Now, even before GCI has reached the "end of the beginning" of its construction of last-mile facilities, ACS seeks forbearance from the unbundling provisions – sections 251(c)(3) and 252(d)(2) – that form the core of the 1996 Act and the backbone of local competition in Anchorage. ACS claims forbearance is warranted because of GCI's great success in bringing the benefits of retail competition to the Anchorage local markets. But the fundamental flaw in ACS's reasoning is its failure to recognize or acknowledge that retail competition in Anchorage exists today *because* of the continued existence of the loop unbundling provisions. Indeed, as explained below in greater detail, it is quite clear that ending loop unbundling in Anchorage would stifle the very retail competition that

has so greatly benefited consumers and that forms the basis for ACS's Petition in the first place.

The Commission recently addressed similar issues in resolving Qwest's petition for forbearance from the Act's unbundling provisions in the Omaha MSA. Even though intermodal loop competition appears far more advanced in Omaha than in Anchorage, and Qwest's principal competitor was apparently far less dependent on use of unbundled loops, the Commission declined to provide anything approaching the relief that ACS seeks here. Instead, the Commission made clear that the statutory standards for forbearance require the incumbent LEC to continue to make unbundled loops available at regulated prices (in that case pursuant to Section 271, which is not applicable here) and to continue to do so at cost-based TELRIC rates (pursuant to Sections 251 and 252) in areas where competitors have not yet been able to build or upgrade their own loops substantially. Granting ACS the relief it seeks in Anchorage – relief from *any* unbundling obligation and *any* pricing standard – would accordingly turn the logic of the Commission's Omaha decision on its head. Indeed, after careful consideration of the issue in both the *Triennial Review Remand Order* and the Omaha decision, it remains true that the Commission has never released an incumbent LEC from the obligation to provide competitors with access to unbundled loops at regulated prices.

ACS's Petition contains a number of serious omissions and oversimplifications. To begin with, ACS has simply failed to make any case whatsoever for forbearance from UNEs other than DS0 loops. Nor has ACS properly recognized that the Anchorage product market must at least be separated into the markets for (1) residential customers (2) small businesses, and (3) medium to large enterprises, and it ignores entirely the geographic variations in alternative facilities that the Commission found important in the *Omaha Forbearance Order*. *Most importantly, ACS has completely ignored the well-*recognized vertical effects that would follow from a grant of virtually unlimited control over an input (unbundled loops) that is necessary to the continued viability of ACS's principal competitor. This control over a bottleneck facility would give ACS the ability to raise GCI's costs and, in consequence, to collect monopoly rents from Anchorage consumers – the antithesis of just and reasonable rates.

In light of the entirely predictable effects of granting ACS the relief it seeks, the Commission must conclude that ACS's Petition, even as to DS0 loops, fails each of the three prongs of the statutory test for forbearance. *First*, the unbundling rules remain necessary to prevent ACS from obtaining the ability to raise its rivals' costs, which would in turn lead to unjust, unreasonable, and discriminatory prices at both the wholesale and retail level. *Second*, the unbundling rules remain necessary to protect consumers for the same reason. *Third*, forbearance is plainly not in the public interest because, as the recent Omaha decision explained, the costs of loop unbundling are justified where competitors have not yet been able to construct loop facilities and the legacy elements in question have already been built and paid for. The Commission accordingly must deny ACS's Petition.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 251(d)(1) in the Anchorage LEC Study Area	WC Docket No. 05-281

OPPOSITION OF GENERAL COMMUNICATION, INC. TO THE PETITION FOR FORBEARANCE FROM SECTIONS 251(c)(3) AND 252(d)(1) OF THE COMMUNICATIONS ACT FILED BY ACS OF ANCHORAGE

General Communication, Inc. ("GCI") opposes the petition for forbearance from Sections 251(c)(3) and 251(d)(1) of the Communications Act of 1934 in the Anchorage LEC study area filed on September 30, 2005 by ACS of Anchorage, Inc. ("ACS"). ACS's Petition relies in large part on GCI's substantial retail market presence, without acknowledging the critical role that unbundled network element ("UNE") loops – made available pursuant to Sections 251(c)(3) and 252(d)(2) – continue to play in allowing GCI to maintain its retail market presence. Further, ACS seeks far *greater* unbundling relief than the Commission granted in its recent *Omaha Forbearance Order*,[1] even though Anchorage is far *less* mature than Omaha in terms of loop competition and dependence of the ILEC's principal competitor on UNE unbundling. Permitting such a result would turn the logic of the *Omaha Forbearance Order* on its head. Granting the forbearance ACS

[1] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 04-223 (rel. Dec. 2, 3005) ("*Omaha Forbearance Order*").

seeks would enable ACS to raise its rivals' costs and lead directly to higher, unjust, and unreasonable prices and restricted choices for Anchorage's residential and business consumers. ACS's petition accordingly fails each of the three prongs of the statutory test for forbearance and, therefore, must be denied.

I. INTRODUCTION AND SUMMARY

Anchorage, Alaska is a shining example of the success of the local competition policies Congress adopted in the Telecommunications Act of 1996. When Congress opened local markets to competition through the 1996 Act, GCI capitalized on the new opportunities created by Congress and significantly increased its facilities investment and accelerated its entry into local telephone markets – purchasing and installing its own switch, collocating at each of the ACS central office switches, and developing its own metropolitan area fiber transport facilities. As Congress envisioned, by leasing unbundled loops and combining them with its own switching and transport facilities, GCI was able to enter the local telephone market in direct facilities-based competition with the Anchorage Telephone Utility ("ATU") and its successor, ACS.[2] GCI's entry into the market brought and continues to bring substantial benefits to Anchorage customers in the form of lower prices, better service, and increased choice.

Continuing the progression Congress envisioned, GCI is now working as quickly as possible to deploy its own last-mile facilities where it is economically feasible to do so. But GCI's transition to full-facilities based competition is hardly complete – it is

[2] GCI's entry into Fairbanks and Juneau was stalled for several years because of legal battles over whether ACS's rural exemption should be lifted in those areas to permit GCI to gain access to unbundled loops. GCI was able to enter the Anchorage markets without first fighting this battle because ACS of Anchorage is not a rural telephone company under the Communications Act.

closer to the "end of the beginning" than the "beginning of the end." Certainly, there is no basis for ACS's bald and largely *unsupported assertion that GCI could complete the* transition in a matter of months presumably by flipping a switch or spending some money.

Indeed, the transition process is at an especially fragile point right now because although there is genuine competition at the retail level, ACS continues to be in sole possession of a last-mile connection to the vast majority of Anchorage residences and businesses. Today, GCI leases ACS facilities to serve almost 70% of its switched voice lines and over **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the locations it serves using non-switched DS1 circuits. This means that GCI – and retail competition in Anchorage – still depends extensively on GCI's access to its principal competitor's legacy facilities at regulated rates. And it means that the unbundling relief that ACS seeks would allow ACS to strangle both retail and wholesale competition in Anchorage by leveraging its control over last-mile facilities into higher prices and reduced choice for Anchorage consumers. As the Commission explained in the *Omaha Forbearance Order*, "[g]ranting … forbearance from the application of Section 251(c)(3) on the basis of competition that exists only due to Section 251(c)(3) would undercut the very competition being used to justify the forbearance, and we decline to engage in that type of circular justification."[3]

Specifically, if the obligation to lease UNE loops to GCI at cost-based rates were removed tomorrow, the current level of retail competition in Anchorage would evaporate. Most likely, ACS would simply refuse to sell unbundled loops to GCI at any price –

[3] *Omaha Forbearance Order* ¶ 68 n.185.

giving it monopoly control over the large areas and customer segments of Anchorage where GCI cannot provide service over its cable plant and inflicting substantial and long-lasting competitive damage to GCI's brand. Even if ACS chose to offer unbundled loops on a tariffed basis, it would do so only at supracompetitive rates designed to force GCI to raise its retail rates. The practical result for consumers would be the same as if ACS did not offer the unbundled loops at all – the prevailing retail price would be a monopoly price. Indeed, GCI would not only risk loss of its current market share, but also be prevented from moving ahead with its plan to upgrade its cable plant in order to bring true intermodal competition to Anchorage. In effect, forbearance would return much of the Anchorage local markets to their pre-1996 state – except this time without many of the state retail regulations designed to protect consumers from ACS's market power.

The applicable legal standard for forbearance thus makes plain that the Commission should deny ACS's Petition. As an initial matter, the Commission may summarily dispense with much of ACS's request for relief, as the Petition offers only the most cursory – and wholly insufficient – support for forbearance from unbundling of sub-loops, NID, inside wire, 911 access facilities, OSS, DS1 loops, and high-capacity loops and dark fiber. The Commission may similarly dispense with any arguments that the *Omaha Forbearance Order* so much as suggests forbearance here. In that decision, the Commission carefully explained that it was not addressing markets like those in Anchorage where competition has arisen through use of UNE loops. Likewise, that *Order*'s reasoning specifically counsels against granting ACS the complete relief from UNE availability and pricing requirements that it seeks, as the Commission there left in place obligations that Qwest make loops available, in every wire center, under Section

271 at regulated rates – obligations that do not apply to ACS as an independent, non-BOC local exchange carrier.

ACS's request for forbearance also obscures the harm forbearance would cause to consumers in all markets by ignoring the distinctions between product and geographic markets in Anchorage, and the operational, technical, and economic obstacles to serving certain markets without access to UNEs. ACS likewise fails to offer any argument that counters GCI's showing that granting ACS's requested relief from UNE availability and pricing requirements will enable ACS to raise rivals' costs and subject retail consumers in all markets to unjust and unreasonable monopoly rates. Finally, the public interest supports continued application of unbundling obligations in all Anchorage markets, as GCI does not require additional incentives to deploy its own last-mile facilities and competition for those last-mile facilities is still emerging. Because ACS has failed to carry its burden with respect to each prong of the forbearance test, its Petition must be denied.

II. UNE LOOP COMPETITION HAS BROUGHT SUBSTANTIAL BENEFITS TO ANCHORAGE RESIDENTIAL AND BUSINESS CONSUMERS.

The availability of UNE loops at TELRIC rates has benefited consumers by fostering vigorous competition throughout Anchorage and across retail product markets. As detailed below, these benefits include innovative offerings, better customer service, and competitive prices. As a result of this retail competition, and without opposition from GCI, the Regulatory Commission of Alaska ("RCA") is poised to grant ACS substantial relief from retail pricing restraints – the only relief that the existing level of competition in the Anchorage markets arguably warrants.

A. *GCI's UNE-Based Competition Brings Consumers Innovative* Products, Services and Options.

GCI entered the Anchorage local exchange markets shortly after Congress passed the 1996 Act.[4] From the start, GCI distinguished itself from ACS by offering competitive prices and bundles of popular services.[5] Customers in all Anchorage markets have since consistently chosen GCI. GCI serves approximately **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of residential and **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of business switched voice lines in Anchorage markets.[6] But GCI's presence in the Anchorage markets has not benefited only GCI's customers. Instead, GCI's innovations and improvements have forced ACS to improve its own products and services.[7]

GCI's presence in Anchorage markets has brought numerous benefits to consumers in the form of new features, better service, innovative product bundles, and substantial price reductions. To list just a few examples:

- GCI entered the Anchorage residential product market in 1997 with the GCI "Value Package," which included basic dial tone plus two of the most frequently used calling features – Caller ID and Call Waiting – for 60% of the price charged by ACS. Through the years, GCI has continued to add features and flexibility to its local telephone service package options.[8]

- GCI offers innovative service packages that include combinations of local, long distance, and wireless telephony, and high-speed broadband and

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[4] Declaration of Gina Borland ¶¶ 18-21 ("Borland Decl."), attached hereto as Exhibit A.

[5] Declaration of Dana Tindall ¶¶ 4-18 ("Tindall Decl."), attached hereto as Exhibit B.

[6] Declaration of William Zarakas ¶ 17 ("Zarakas Decl.), attached hereto as Exhibit C; Exhibit III, attached thereto.

[7] Tindall Decl. ¶¶ 4-18.

[8] *Id.* ¶ 4.

digital television service. Customers also have the flexibility to choose additional features and combine them with GCI's service packages.[9]

- After installation of its Anchorage Lucent 5E switch, GCI used UNE loops to offer services to allow customers to better filter their phone calls, including Selective Call Forwarding, Selective Call Acceptance, Selective Call Rejection, and Selective Distinctive Alert.[10]

- GCI has introduced telephone service packages tailored for business customers, and offered products, such as Fast Track Primary Rate ISDN, designed to make high-capacity services affordable and scalable for the small business customer.[11]

- Responding to the seasonal nature of much of Anchorage's business community, GCI has developed products, such as Flexible Digital Subscriber Service, that give business customers greater flexibility to make seasonal adjustments to their ordered services.[12]

- GCI offers businesses total solutions for their communications requirements and provides comprehensive packages tailored to specific business needs, including long distance phone service, local phone service, cellular service, data communications, Internet, network design, commercial cable television, and cable advertising.[13]

- GCI has informed consumers about available services and made those services more affordable, increasing their adoption by consumers. For example, GCI provided customers with free Caller ID boxes and offered Caller ID service at a reasonable price, driving Anchorage-wide adoption of this now ubiquitous service.[14]

- GCI charges its customers less for comparable services, does not charge activation fees for new service, and has reduced the burden of termination penalties for term contracts by releasing customers from those contracts if GCI fails to match a competitor's offer.[15]

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[9] *Id.* ¶ 7.

[10] *Id.* ¶ 6.

[11] *Id.* ¶ 8.

[12] *Id.* ¶ 10.

[13] *Id.* ¶ 11.

[14] *Id.* ¶ 9.

[15] *Id.* ¶¶ 12-16.

- GCI has made it easier for consumers to visit customer service sites by opening additional sites and extending their hours.[16]

ACS has repeatedly responded to these competitive pressures by improving its own offerings, pricing and customer service in order to match GCI. Notably, in geographic areas where GCI does not compete with ACS, ACS has not made similar efforts – failing, for example, to offer the same types of bundled services that it makes available in Anchorage.[17] Thus, by forcing ACS to compete for customers, GCI's entry into the market through UNE loops has increased choice, decreased prices, and improved service for all Anchorage consumers.

B. UNE-Based Competition Allowed the Market to Discipline ACS's Attempts to Exercise Retail Market Power.

The Commission need not speculate about the ability of UNE-based competition to discipline the retail market and protect consumers. In November 2001, shortly after acquiring ATU, ACS sought and received permission from the RCA to raise its rates for retail residential telephone service by 24%.[18] Then (as now) ACS had two competitors in the local telephone market – GCI and AT&T Alascom.[19] Unlike GCI, which predominantly leased UNE loops and combined those loops with its own switching and transport, AT&T Alascom provided local telephone service solely by reselling ACS local service.[20] As a resale carrier whose cost for wholesale ACS service was set based on

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[16] *Id.* ¶ 14.

[17] *See* Exhibit DT1, attached to Tindall Decl.

[18] Tindall Decl. ¶ 13; Borland Decl. ¶ 47.

[19] Borland Decl. ¶ 5.

[20] *Id.*

ACS's retail rate, AT&T Alascom was forced to increase its prices to mirror the increased rates it was charged by ACS.[21]

GCI, by contrast, did not raise its local telephone rates.[22] As a carrier relying predominantly on cost-based UNEs, GCI's costs were independent of ACS's retail prices, and ACS's increased retail prices therefore did not automatically increase GCI's costs.[23] Faced with ACS's price increase, consumers flocked to GCI. ACS was eventually forced to respond by bundling local services and calling features, effectively reducing its rates. Absent the competition from GCI made possible by GCI's access to UNE loops at TELRIC rates, Anchorage consumers would have had no alternative to ACS's draconian rate increase. There can be no clearer demonstration that resale of ACS retail services alone will not enable true competition in Anchorage.

ACS's Petition does not deny the foregoing account of how GCI "kept [ACS's] rates in check."[24] Instead, it attempts to transform this plain example of the consumer benefits of UNE-based competition into a lesson about (1) Anchorage consumers' eagerness to switch providers in order to receive a lower price (*i.e.*, high demand elasticity) and (2) GCI's ability to quickly accommodate new customers (*i.e.*, high supply elasticity).[25] But ACS fails to acknowledge both that consumers had alternatives in 2001

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[21] Tindall Decl. ¶ 13.

[22] Borland Decl. ¶ 47.

[23] *Id.*¶ 47.

[24] *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(2) and 252(d)(1) in the Anchorage LEC Study* Area, WC Docket No. 05-281, at 38-39 (filed September 30, 2005) ("ACS Petition"). Indeed, ACS concedes that after it raised prices, "GCI began signing up local customers at twice the rate that it had been." *Id.*

[25] *Id.*

when ACS raised its prices and that GCI was able to accept new customers that chose GCI only because of UNEs.[26] Without the last-mile access that UNEs provide, GCI could not counter a comparable price increase by ACS today. Consumers in most parts of Anchorage would instead face no alternative but to pay the higher prices that ACS might demand. Indeed, elsewhere in its Petition, ACS concedes that "the benefit of [UNE-based] competition has been that most Anchorage customers, businesses and residences, have a choice of facilities-based providers."[27] Of course, ACS does not go on to point out the corollary: If the Commission gets rid of UNE-based competition, as ACS asks, then most Anchorage customers will cease to have a choice of facilities-based providers.

C. UNE-Based Competition Has Allowed the RCA to Adopt Rules to Substantially Deregulate Retail Rates.

The retail competition that has developed as a result of GCI's access to UNE loops in Anchorage has allowed the RCA to substantially deregulate the Anchorage market. On August 5, 2005, the RCA adopted rules that permit ACS to petition to be declared a non-dominant carrier in Anchorage with respect to its retail services. ACS has now petitioned for this relief, and GCI has not opposed ACS's request. When the RCA grants this petition, ACS will be free to raise or lower any of its retail rates, including all rates for bundled service packages, and for new and repackaged services. The sole exception will be standalone offerings of basic local telephone service to residential and single-line business users. To ensure an orderly transition to market rates, ACS will be permitted to increase the standalone basic service rate by 8% per year through the year

[26] Declaration of David Sappington ¶¶ 88-90 ("Sappington Decl."), attached hereto as Exhibit D.

[27] ACS Petition at 14.

2010, at which time all caps on the standalone basic residential and single line business rate will be eliminated.[28] With the adoption of these rules, and once it grants ACS retail non-dominant status, the RCA will have substantially deregulated Anchorage retail rates.

This retail market relief is the only relief warranted by the current state of competition in Anchorage. As discussed below, ACS supports its plea for forbearance primarily by pointing to GCI's share of the retail market, and fails to demonstrate that competition – or self-provisioned alternatives to ACS facilities – currently and sufficiently exists in the wholesale market. To the extent that the facts presented by ACS warrant any regulatory relief, therefore, it must be confined to the retail market and does not logically justify relief from the unbundling requirements in Sections 251(c)(3) and 252(d)(1).

III. ANCHORAGE RETAIL COMPETITION DEPENDS SUBSTANTIALLY ON UNE LOOPS, OVER WHICH ACS RETAINS SUBSTANTIAL MARKET POWER.

Because GCI strongly prefers not to rely on its principal competitor in order to deliver service, GCI has constructed (and continues to construct) its own facilities as quickly as possible – and in far less time that it took ACS and its predecessors to build out its ubiquitous network.[29] The loop facilities that GCI leases from ACS nonetheless remain essential to GCI's provision of Anchorage-wide retail service to the residential small business, and medium to large enterprise markets. GCI relied on UNE loops to offer service and build a local customer base in the years before equipment and

[28] This regulatory change has significant consequences for GCI as well, as it too will be subject to these limits on increases in standalone basic service rates. As a result, should the Commission grant ACS's Petition, GCI could be trapped between ACS's ability to raise the rates it charges GCI and GCI's inability to pass those increases on to customers. *See generally* Section III.F below.

[29] *See generally* Borland Decl. ¶¶ 11-17. GCI has already made substantial process in a much shorter time than the many decades over which ACS's network was constructed.

technology developments enabled GCI to use its cable plant for high quality voice service. *Today, GCI continues to rely on ACS loops to serve customers as it makes the* changes to its existing facilities necessary to self-provision voice service. Even when GCI completes the many steps necessary to provide voice over its cable plant, however, it will be forced to rely on ACS to provide service in the areas that are not passed by GCI facilities and to provide service to businesses and multiple-dwelling units that cannot be effectively served from GCI's cable plant.[30]

A. GCI Relies on Unbundled Loops to Provide Competitive Services to Residential, Small Business, and Medium and Large Enterprise Customers.

ACS has overwhelming control of the markets for last-mile facilities in Anchorage. This control extends across the residential, small business, and medium to large enterprise markets,[31] and across each wire center in the Anchorage study area.

[30] As discussed in greater detail below, the Commission has concluded that CMRS and VoIP are not substitutes for wireline local voice service of the sort provided by GCI, ACS, and other competitors. *See* Section IV.C.3 below. This conclusion is *a fortiori* correct as applied to Anchorage, as the largest VoIP providers (Vonage (http://vonage.com/avail.php?lid=nav_avail), Verizon VoiceWing (https://www22.verizon.com/ForYourHome/VOIP/Order/CallingAreaSelection.aspx), AT&T CallVantage (https://www.callvantage.att.com/signup/ServiceAvailabilityLite?soac=69717), Packet8 (http://www.packet8.net/store/index.asp?mode=&pg=products&specific=jnnodpo0), and Sunrocket (https://www.sunrocket.com/sign_up/availability/viewAvailabilityMap.do) do not offer Alaska phone numbers. No VoIP provider may offer an integrated VoIP service that can receive locally dialed calls in Anchorage without Anchorage numbers. *See* also Sappington Decl. ¶¶ 106-107. Moreover, the fact that ACS may be losing minutes to wireless carriers, even if true, proves nothing because ACS is itself a leading wireless carrier in Anchorage.

[31] As the Commission has explained, "because the services offered to mass market customers may not be adequate or feasible substitutes for services offered to business customers," treating the residential and business services markets as a single market is "unworkable." *Omaha Forbearance Order* ¶ 21. In Anchorage, as elsewhere, business customers typically demand products and services that are distinct from those sought by residential customers. Borland Decl. ¶ 4.

Because each product market presents distinct economic and technological characteristics, the Commission should disregard ACS's unsupported and oversimplified assertion that "[b]ecause the Anchorage LEC market is small, the distinction between mass market and enterprise loops is irrelevant."[32] In fact, contrary to ACS's view, the size of the Anchorage LEC market bears no relation to the number of distinct product markets. As the *Omaha Forbearance Order* properly concluded, the relevant question is whether "the services offered to mass market customers [are] ... adequate or feasible substitutes for services offered to business customers."[33] Here, it is clear that there are at least three distinct groupings of products, none of which are adequate or feasible substitutes for the other.[34]

The first product market is composed of residential users, who require one or more traditional single line POTS lines. Both GCI and ACS market their residential products separately from their business products.[35] GCI currently relies on ACS facilities (either leased UNE loops or resale) to provide service to **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of its lines to residential customers across Anchorage.[36]

This product market is served across multiple geographic markets in Anchorage, not just the single geographic market asserted by ACS. As the Commission has recognized and Dr. Sappington points out, the appropriate geographic market for local exchange and exchange access services is each residential customer's location, but it is

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[32] ACS Petition at 12; *see generally* Section IV.B. below.

[33] *Omaha Forbearance Order* ¶ 21.

[34] *See generally* Sappington Decl. ¶¶ 32-39, 108-112.

[35] *See* www.gci.com (distinguishing "For Home" from "For Business" and www.acsalaska.com (distinguishing "personal" and "business").

[36] Zarakas Decl. ¶ 18 and Exhibits I and V, attached thereto.

appropriate to treat as a geographic market "an area in which all customers . . . likely face the same competitive alternatives" for the product in question.[37] That is clearly not the case in Anchorage.

As Dr. Sappington explains, competitive conditions vary considerably in different regions of Anchorage, even within individual ACS wire centers, for at least three reasons. First, GCI's cable plant – on which ACS principally relies in making its case for forbearance – is not present throughout the ACS study area. Indeed, GCI's certificated LEC service area, which is coextensive with ACS's study area, is larger than GCI's certificated cable service area.[38] For example, GCI is not the certificated cable provider in Girdwood, which receives cable service from Eyecom, an affiliate of another Alaska ILEC.[39] Second, GCI's network and cable nodes have been upgraded as necessary to provide voice service and necessary back-up power in some parts of Anchorage but not in

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[37] *Application of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20017 (¶54) (1997) ("*NYNEX-Bell Atlantic Order*"); Sappington Decl. ¶ 35. *See also SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, FCC 05-183 (¶ 97) (rel. Nov. 17, 2005) ("*SBC-AT&T Order* "); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, FCC 05-184 (¶ 98) (rel. Nov. 17, 2005) ("*Verizon-MCI Order*").

[38] *See* Exhibits E and F, attached hereto. ACS has recently conducted ex parte meetings that allege "the existence of significant facilities-based competition for local exchange services in the Anchorage market" and submitted a map purporting to show the location of customers served by GCI over its cable telephony facilities. Ex Parte Letter from Elizabeth Park of ACS of Anchorage, Inc. to Marlene H. Dortch, WC Docket No. 05-281 (filed Oct. 20, 2005). This crudely-drawn map fails to disclose even basic information such as the fact that GCI's certificated LEC service area is larger than the footprint of its cable plant. More importantly, it contains an insufficient level of detail to show GCI's coverage on a home-by-home, business-by-business, and block-by-block basis, as required to conduct the necessary analysis. A more complete illustration of GCI's cable plant coverage is contained in Exhibits E and F.

[39] Borland Decl. ¶ 28.

other parts.[40] Third, GCI's cable networks are not ubiquitous, even within its franchised service area.[41]

Although GCI's cable network does not – and would not be expected to – correspond with ACS's wire centers, examining GCI's use of UNEs across the ACS wire centers shows that residential customers in different wire centers would face far different competitive choices under ACS's requested forbearance.[42] Currently, in the seven largest wire centers, the percentage of retail lines for which GCI uses UNE-L, with one exception, ranges between **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** and **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the residential switched voice lines.[43] Factoring in resale service, which GCI must use in areas in which it cannot get access to a UNE loop at the ACS central office, in these wire centers GCI leases ACS facilities in some form for between **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** and **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of GCI's residential lines. In the remaining wire center, where cable telephony deployment and customer transition is furthest along and residential locations are the most dense, GCI

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[40] Haynes Decl. ¶ 13.

[41] *See* Zarakas Decl. ¶¶ 5, 8 and Exhibit V, attached thereto (showing percentage of GCI residential lines in ACS wire centers not near cable plant).

[42] The Anchorage Study Area is made up of the Central, East, North, O'Malley, Rabbit Creek, South, West, Elmendorf, Ft. Rich, Girdwood, and Indian wire centers. *See* National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4, Section 13, at 2-3, 141st revision, issued September 16, 2005 (effective Oct. 1, 2005) ("NECA Tariff 4"). GCI does not believe that wire centers are the appropriate geographic market. The appropriate geographic markets are defined according to where GCI has plant that can be used to serve customers, which does not conform neatly with historical wire center boundaries.

[43] *See* Exhibit V, attached to Zarakas Decl. GCI must serve 100% of residential lines using ACS facilities (UNE or resale) in the areas in which it has no cable plant, which are wire centers included in the "Other" category in Exhibit V.

still provides only **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of the last-mile facilities that it uses to provide residential service.[44]

Furthermore, even in areas that are passed by GCI cable plant, MDUs face different competitive alternatives to ACS loops than do single family dwellings. GCI has not been able to deploy to larger MDUs using its network-powered cable telephony service because of a lack of network-powered multiline multimedia terminal adapters ("MTAs"), and the operational difficulty of installing additional drops.[45] Accordingly, MDUs should be considered as a separate relevant market from single-family dwellings.[46]

The second product market is small business. Again, these services are marketed by both GCI and ACS distinctly from their residential offerings.[47] And, for the same reasons as discussed above with respect to residential telephony service, services to small business customers cannot be treated as a single geographic market across the entire Anchorage LEC study area, but must be separated according to the level of competitive alternatives to ACS loops. Further, cable telephony cannot be used to serve GCI's small business customers outside of GCI's cable service area. And even within GCI's franchised cable area, cable plant does not run down every street – particularly in business areas. As evidence of this, GCI currently serves **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of its Anchorage retail residential lines using leased ACS facilities, but serves **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of its

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[44] *See id.*

[45] Haynes Declaration ¶¶ 17-19.

[46] Sappington Decl.¶ 29.

[47] *See supra* at 13 n.35.

Anchorage retail small business customer lines over leased ACS facilities.[48] Moreover, looking at GCI retail business switched voice lines *(for all sizes of business customers)*, and excepting a single wire center, in the seven largest wire centers GCI serves from **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** to **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the business switched voice lines over leased ACS facilities.[49]

Moreover, even when GCI completes the upgrade of its entire cable system to provide cable telephony, there will still be significant differences within Anchorage as to the competitive alternatives to ACS loops when serving small business customers. Anchorage-wide, GCI will not be able to self-provision loops to serve approximately **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of small business customer lines.[50] This will likely vary substantially across the ACS wire centers.[51]

The third product market is composed of medium to large enterprise customers, who have 8 or more switched business lines or who require higher capacity lines, such as DS1s, fractional DS1s, and high capacity services provided by a combination of GCI

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[48] *See* Zarakas Decl. ¶ 18 and Exhibits I and IV, attached thereto. ACS's Petition concludes that GCI serves one-third of its retail lines over "its own facilities or its own multiplexing." ACS Petition at 8. This metric is misleading because it includes instances where GCI uses its own multiplexing equipment to serve 4-6 lines over an ACS UNE loop. Because GCI would not be unable to serve these customers without UNE access, these lines should be counted apart from the lines that GCI serves using exclusively its own facilities. In other words, if ACS receives the relief that it seeks here, GCI will no longer be able to provide facilities-based service to these customers.

[49] Exhibit VI, attached to Zarakas Decl.

[50] Zarakas Decl. ¶ 36 and Exhibit I, attached thereto.

[51] *See* Exhibit VI, attached to Zarakas Decl.

electronics and DS0 loops.[52] ACS's attempt to group these customers with small business customers is wholly disingenuous. Differences in retail market share alone between business switched voice services generally (in which ACS has a **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** market share) and non-switched DS1 circuits (in which ACS has a **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** market share), show that these medium to large business customers are not in the same product market as small business.[53] Moreover, independent industry participants have placed DS1 based services in a different market from the small business DS0s.[54]

Once again, the entire ACS LEC study area is not the appropriate geographic market for evaluating service to medium and large business locations, which must be viewed according to the proximity to GCI's fiber network. In many instances, GCI's cable plant does not "pass" such customers and, in any event, equipment manufacturers do not currently offer standardized DOCSIS products that allow GCI to serve such customers' needs via last-mile cable facilities because there are no DOCSIS standards for DS1 services.[55] Today, **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of GCI medium and large business customer locations with non-switched DS1s are served using

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[52] As Dr. Sappington observes, it may be better to place customers with DS3 and greater capacity connections in a separate product market. Sappington Decl. at ¶ 31. However, because there are relatively few of these customers in Anchorage, and because GCI purchases no DS3 UNEs, these customers are significant here only to the extent they purchase DS1s. Thus, we do not treat these customers as a separate product market.

[53] Compare Exhibit III, attached to Zarakas Decl., with Exhibit II, attached to *id.*

[54] *See generally* Donald Sorenson, *MSO Commercial Services Development, Scientific-Atlanta's Position on the Significance of Commercial Services and the Critical Success Factors for MSOs*, Scientific-Atlanta, Commercial Service Series, http://www.scientificatlanta.com/products/customers/commercialservicesPDFs/0803_G1499A_CommSvcCable.pdf (last visited January 5, 2006) ("Sorenson"); *see also* Sappington Decl. ¶ 30.

[55] Haynes Decl. ¶¶ 20-22.